

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Apr 19, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TERESA S.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY

Defendant.

No. 1:20-CV-03053-JTR

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
REMANDING FOR ADDITIONAL  
PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 20, 31. Attorney D. James Tree represents Teresa S. (Plaintiff); Special Assistant United States Attorney Martha Boden represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 6. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS IN PART** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

## JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits and Supplemental Security Income on August 20, 2014, alleging disability since January 12, 2011, due to back pain, headaches, left arm pain and numbness, neck pain, memory loss, depression, anxiety, hypertension, thyroid problem, and diabetes. Tr. 84-85. The applications were denied initially and upon reconsideration. Tr. 144-52, 155-67. Administrative Law Judge (ALJ) Virginia Robinson held a hearing on February 9, 2017, Tr. 40-83, and issued an unfavorable decision on November 29, 2017, Tr. 16-30. Plaintiff requested review by the Appeals Council and the Appeals Council denied Plaintiff's request for review on August 31, 2018. Tr. 1-5. Plaintiff filed a civil action in this court and on April 17, 2019, the court issued the parties' stipulated motion to remand for further proceedings. Tr. 1401-02.

On December 31, 2019, ALJ Robinson held a remand hearing, Tr. 1302-24, and on February 5, 2020, she issued a second unfavorable decision. Tr. 1264-90. Plaintiff did not file written exceptions with the Appeals Council and the Appeals Council did not review the decision on its own motion; therefore the ALJ's February 2020 decision became the final decision of the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Tr. 1262. Plaintiff filed this action for judicial review on April 23, 2020. ECF No. 1.

## STATEMENT OF FACTS

Plaintiff was born in 1966 and was 44 years old as of her alleged onset date. Tr. 84. She has a high school education and worked primarily as a home aid caregiver and nurse assistant. Tr. 73, 393. She has experienced a number of physical incidents, including being assaulted by a patient in 2004 and being in a motor vehicle accident in 2009. Tr. 524, 2064. In 2011 she had surgery on her left shoulder. Tr. 905-07. She subsequently developed back pain and in 2016 she underwent a lumbar fusion. Tr. 1190-91, 1238-40. Over the years she periodically

1 had injections in both elbows for epicondylitis. Tr. 1232, 1673, 1677, 1818, 2105.  
 2 Over the course of the relevant period, she was also treated for depression, anxiety,  
 3 diabetes, and various other acute issues.

#### 4 **STANDARD OF REVIEW**

5 The ALJ is responsible for determining credibility, resolving conflicts in  
 6 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
 7 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
 8 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
 9 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed  
 10 only if it is not supported by substantial evidence or if it is based on legal error.  
 11 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
 12 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
 13 1098. Put another way, substantial evidence is such relevant evidence as a  
 14 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
 15 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
 16 rational interpretation, the Court may not substitute its judgment for that of the  
 17 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
 18 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
 19 administrative findings, or if conflicting evidence supports a finding of either  
 20 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
 21 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
 22 supported by substantial evidence will be set aside if the proper legal standards  
 23 were not applied in weighing the evidence and making the decision. *Browner v.*  
 24 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

#### 25 **SEQUENTIAL EVALUATION PROCESS**

26 The Commissioner has established a five-step sequential evaluation process  
 27 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 28 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through

four, the claimant has the burden of establishing a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant establishes that a physical or mental impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show (1) the claimant can make an adjustment to other work; and (2) the claimant can perform specific jobs that exist in the national economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make an adjustment to other work in the national economy, the claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### ADMINISTRATIVE FINDINGS

On February 5, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the alleged onset date. Tr. 1268.

At step two, the ALJ determined Plaintiff had the following severe impairments: spinal impairment, left shoulder impairments, bilateral elbow impairment/epicondylitis, affective disorder(s), and anxiety disorder(s). *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 1270-71.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found she could perform light exertion level work with the following limitations:

She can lift or carry up to 20 pounds occasionally and up to 10 pounds frequently, stand or walk for approximately 6 hours and sit for approximately 6 hours per 8 hour work day with normal breaks. She can occasionally climb ramps or stairs; never climb ladders, ropes, or

1 scaffolds. She can frequently balance, stoop, kneel, crouch, and only  
2 occasionally crawl. She can engage in frequent handling and fingering  
3 bilaterally. She can frequently reach overhead with left upper  
4 extremity. She should avoid concentrated exposure to excessive  
5 vibration and workplace hazards such as working with dangerous  
6 machinery and working at unprotected heights. She can perform  
7 simple routine tasks, in a routine work environment. She can make  
8 simple work related decisions with normal breaks. She can have  
9 superficial interaction with coworkers, with no teamwork or  
10 supervising other employees required as part of the job. She can have  
11 superficial contact with the public.

12 Tr. 1271.

13 At step four, the ALJ found Plaintiff was unable to perform her past relevant  
14 work as a home attendant and resident care aide. Tr. 1288-89.

15 At step five the ALJ found, considering Plaintiff's age, education, work  
16 experience, and residual functional capacity, there were jobs that existed in  
17 significant numbers in the national economy that Plaintiff could perform,  
18 specifically identifying the representative occupations of cleaner housekeeping,  
19 production line assembler, and inspector/hand packager. Tr. 1289-90.

20 The ALJ thus concluded Plaintiff was not under a disability within the  
21 meaning of the Social Security Act at any time from the alleged onset date through  
22 the date of the decision. Tr. 1290.

## 23 ISSUES

24 The question presented is whether substantial evidence supports the ALJ's  
25 decision denying benefits and, if so, whether that decision is based on proper legal  
26 standards.

27 Plaintiff contends the ALJ erred by (1) improperly assessing the severe  
28 impairments at step two; (2) not properly assessing Plaintiff's subjective  
testimony; and (3) not properly assessing the medical opinion evidence.

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## DISCUSSION

### 1. Plaintiff's subjective statements

Plaintiff contends the ALJ erred by improperly rejecting her subjective statements. ECF No. 20 at 5-15.

It is the province of the ALJ to make determinations regarding a claimant's subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment merely because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

The ALJ concluded Plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms; however, Plaintiff's statements concerning the intensity, persistence and limiting effects of those symptoms were not entirely consistent with the medical evidence and other evidence in the record. Tr. 1273. The ALJ found the medical evidence of record did not substantiate Plaintiff's allegations regarding her physical or mental limitations. Tr. 1273-80. The ALJ further found Plaintiff's work history (including vocational training and job search), receipt of unemployment benefits, and activities contradicted her allegations. Tr. 1280-82.

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1 Plaintiff asserts the ALJ erred in discounting her reports, arguing the ALJ  
2 omitted supportive objective findings from her summary, failed to explicitly  
3 identify alleged inconsistencies, and ignored the context of comments regarding  
4 improvement and various activities. ECF No. 20 at 5-15. Defendant argues the ALJ  
5 reasonably considered the support from the medical record and evidence of  
6 improvement with treatment, arguing Plaintiff is simply offering an alternative  
7 interpretation of the evidence. ECF No. 31 at 8-11.

8 The Court finds the ALJ did not offer clear and convincing reasons for  
9 discounting Plaintiff's subjective reports.

10 *a. Activities*

11 The ALJ found Plaintiff's exercise and social activities, including walking,  
12 visiting friends, and attending sporting events and church, did not support and  
13 plainly contradicted Plaintiff's allegations that her physical and mental functioning  
14 was extremely limited. Tr. 1281.

15 A claimant's daily activities may support an adverse credibility finding if the  
16 claimant's activities contradict her other testimony. *Orn v. Astrue*, 495 F.3d 625,  
17 639 (9th Cir. 2007). However, the ALJ failed to identify any actual inconsistency  
18 between these minimal and sporadic activities and Plaintiff's allegations. The  
19 record reflects Plaintiff would occasionally take short walks for exercise, but that  
20 she sometimes was unable to do so because of pain or lack of motivation due to her  
21 mental health. Tr. 1681, 1733, 1749, 1750, 1758, 1760, 1771, 1782, 1810, 1853,  
22 2084, 2085, 2113. There is nothing inconsistent about this activity. Similarly,  
23 Plaintiff never claimed to be completely unable to engage in social activities or  
24 leave her home. Tr. 1272-73. Therefore, her ability to occasionally visit with  
25 friends and family and attend church does not demonstrate any inconsistency with  
26 her allegations or testimony at the hearing. The ALJ failed to indicate what  
27 testimony she found to be contradicted by these activities.

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1 Therefore, this was not a clear and convincing reason to discount Plaintiff's  
2 allegations.

3 *b. Work activity and unemployment benefits*

4 The ALJ found Plaintiff's allegations to be contradicted by her employment  
5 activities, including working jobs that did not end due to her impairments and her  
6 job searching activities during the relevant period. Tr. 1280-81. The ALJ further  
7 found her vocational retraining and receipt of unemployment benefits indicated she  
8 was capable of some work. *Id.*

9 The Court finds this discussion does not constitute clear and convincing  
10 reasons for discounting Plaintiff's allegations, at least not for the entire relevant  
11 period. An ALJ may consider past work, the reasons for leaving employment, or  
12 evidence that a claimant's condition has not prevented them from working in the  
13 past and has remained constant for a number of years. *See e.g., Bruton v.*  
14 *Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (ALJ properly relied on the fact that  
15 claimant left his job because he was laid off, rather than because he was injured, in  
16 finding the claimant's statement unreliable); *Trevizo v. Berryhill*, 871 F.3d 664,  
17 681 (9th Cir. 2017); *Gregory v. Bowen*, 844 F.2d 664, 666-67 (9th Cir. 1988).  
18 However, all of the activities cited by the ALJ occurred in 2014 or 2015, while the  
19 record indicates Plaintiff's back pain and elbow conditions developed after or  
20 simultaneously with the activities the ALJ identified. Tr. 584 (2/2013, developing  
21 shoulder and back pain with increased keyboarding from vocational retraining,  
22 needs ergonomic accommodations); 1044 (5/2014, begins reporting back pain that  
23 radiates into left leg); 1097 (11/2014, begins pain management for back pain);  
24 1087 (3/2015, increased back pain with new job); 1239-40 (11/2015, consult with  
25 orthopedic surgeon for back pain); 1121 (1/2016, begins reporting elbow pain);  
26 1231-32 (6/2016, injections for elbow pain); 1190-91 (9/2016, lumbar fusion  
27 surgery). While the ALJ's discussion of Plaintiff's vocational activities may be a  
28 reason to discount her allegations of disability back to 2011, the ALJ failed to



1 explain how these factors detracted from Plaintiff's testimony regarding the  
2 worsening of her physical condition over the following years.

3 With respect to Plaintiff's ongoing job search activities, the ALJ's  
4 implication that Plaintiff's job search stagnated due to lack of transportation omits  
5 the remainder of the treatment note where Plaintiff indicated she did not think she  
6 could work due to pain and mental health conditions, even if she had gotten calls  
7 back from her applications. Tr. 1734. The fact that Plaintiff was attempting to find  
8 some work does not indicate she was actually capable of performing the jobs she  
9 was applying for and does not undermine her allegations of significant limitations.

10 *c. Objective evidence*

11 An ALJ may cite inconsistencies between a claimant's testimony and the  
12 objective medical evidence in discounting the claimant's symptom statements.  
13 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). But this  
14 cannot be the only reason provided by the ALJ. *See Lester*, 81 F.3d at 834 (the ALJ  
15 may not discredit the claimant's testimony as to subjective symptoms merely  
16 because they are unsupported by objective evidence). "[A]n ALJ does not provide  
17 specific, clear, and convincing reasons for rejecting a claimant's testimony by  
18 simply reciting the medical evidence in support of his or her residual functional  
19 capacity determination." *Brown-Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir.  
20 2015).

21 The ALJ engaged in an extensive discussion of the objective medical  
22 evidence regarding Plaintiff's physical and mental conditions, finding the evidence  
23 did not support that her conditions were as seriously restricting as alleged. Tr.  
24 1273-80. However, because none of the ALJ's other reasons reach the clear and  
25 convincing level, the ALJ's summary of Plaintiff's treatment over the years does  
26 not on its own constitute a clear and convincing basis to discount her allegations of  
27 disabling pain and other symptoms.

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1 The Court further notes that the ALJ's discussion fails to acknowledge the  
2 changing circumstances of Plaintiff's medical conditions. For example, the ALJ  
3 discounts Plaintiff's allegations regarding back pain because she improved  
4 following her lumbar surgery in 2016. Tr. 1274. However, this fails to take into  
5 consideration the greater than two years of back pain Plaintiff reported prior to  
6 receiving the surgery, the months of recovery following the surgery, and the  
7 residual pain and limitations she had, despite improving. Tr. 1037-44 (early reports  
8 of back pain in 2014); 1239-40 (orthopedic consultations in 2015); 1190-91  
9 (surgery in 2016); 1879-1903 (physical therapy for back, slow progress, using a  
10 walker); 1668-70 (one year post-surgery still has pain, but overall satisfied with  
11 results). By issuing one RFC covering the entire relevant period, the ALJ failed to  
12 account for the changing circumstances of Plaintiff's physical condition. Similarly,  
13 as discussed further below, Plaintiff's mental health issues evolved over the years,  
14 with treatment beginning in earnest in 2016 (Tr. 1225), yet the ALJ discounted  
15 Plaintiff's mental health reports due to lack of evidence in the earlier years. On  
16 remand, the treatment records must be viewed in light of the overall context and  
17 diagnostic record. *See Holohan v. Massanari*, 246 F.3d 1195, 1205, 1208 (9th Cir.  
18 2001).; *Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1200-01 (9th Cir. 2008).

## 19 **2. Medical Opinion Evidence**

20 Plaintiff asserts the ALJ improperly evaluated the medical opinion evidence,  
21 including opinions regarding Plaintiff's physical functioning from Dr. Liu, Ms.  
22 Hahn, Ms. Franck, Dr. Drenguis, and Dr. Saue, and opinions on Plaintiff's mental  
23 functioning from Drs. Beachy, Sawyer, Bowes, Petaja, Sanchez, and Ford.

24 When a treating or examining physician's opinion is contradicted by another  
25 physician, the ALJ may reject the treating physician's opinion for "specific and  
26 legitimate reasons" based on substantial evidence. *Andrews v. Shalala*, 53 F.3d  
27 1035, 1041 (9th Cir. 1995); *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).  
28 The specific and legitimate standard can be met by the ALJ setting out a detailed

1 and thorough summary of the facts and conflicting clinical evidence, stating their  
2 interpretation thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747,  
3 751 (9th Cir. 1989). The ALJ is required to do more than offer their conclusions,  
4 they “must set forth [their] interpretations and explain why they, rather than the  
5 doctors’, are correct.” *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

6 The Commissioner may reject the opinion of a non-examining physician by  
7 reference to specific evidence in the medical record. *Sousa v. Callahan*, 143 F.3d  
8 1240, 1244 (9th Cir. 1998).

9 *a. Dr. Liu, Ms. Hahn, Ms. Franck*

10 In 2011 and 2012, following left shoulder surgery, Plaintiff was seen by  
11 multiple treating providers in connection with her claim through the Department of  
12 Labor and Industries, with the providers completing Activity Prescription Forms  
13 limiting her ability to work, or otherwise commenting on her work restrictions  
14 while recovering from surgery. Tr. 545, 562, 574, 577, 586-92, 653, 659, 899, 988,  
15 990, 1005-09, 1161.

16 The ALJ adopted the findings and analysis from her prior decision regarding  
17 these opinions, and assigned them little weight, noting they were temporary and  
18 that a November 2015 exam showed generally normal range of motion and  
19 functionality. Tr. 27, 1283. She further generally found the limitations were not  
20 supported by the objective evidence and conflicted with Plaintiff’s activities,  
21 noting that when extreme limitations are not supported, “it indicates that the author  
22 has either inaccurate information regarding symptoms, limitations, activities and  
23 abilities, does not fully understand the functional activities being rated, or is  
24 serving as an advocate.” Tr. 27.

25 Plaintiff argues the ALJ violated the rule of mandate by failing to reevaluate  
26 the opinion evidence, and argues that the ALJ’s analysis is too general,  
27 unsupported by any citations, and inconsistent with the record showing objective  
28 limitations on Plaintiff’s use of her shoulder. ECF No. 20 at 16-19. Defendant

1 argues the ALJ did not err in adopting her prior analysis, as the remand order only  
2 specifically directed reconsideration of Dr. Sawyer's opinion, and asserts that the  
3 ALJ offered sufficient reasons for discounting the temporary opinions and  
4 reasonably interpreted the record in finding the opinions unsupported by the record  
5 and Plaintiff's activities. ECF No. 31 at 12-14.

6 The Court finds the ALJ did not violate the rule of mandate, as the remand  
7 order only directed specific reconsideration of Dr. Sawyer's opinion. Tr. 1401-02,  
8 1413-14. The ALJ adopted her prior findings in light of her further review of the  
9 medical record. Tr. 1283.

10 However, the Court finds the ALJ failed to offer sufficient reasons for  
11 disregarding the opined limitations. Though each individual form assessed  
12 temporary restrictions in light of Plaintiff's ongoing recovery from surgery, when  
13 read together the opinions cover a period from Plaintiff's surgery in January 2011  
14 through April 2012. Tr. 899, 1009. Dr. Liu asserted Plaintiff's limitations as of  
15 early 2012 were permanent. Tr. 659, 1009. The Commissioner's assertion that  
16 these opinions were temporary and thus not indicative of whether Plaintiff was  
17 disabled is not supported.

18 Furthermore, the Court finds the ALJ's discussion of the lack of support  
19 from the objective evidence to be unavailing. The only citation the ALJ provided  
20 was from a physical exam of Plaintiff's lumbar spine in November 2015. Tr. 1238.  
21 This has no bearing on whether limitations relating to Plaintiff's shoulder in 2011  
22 and 2012 were accurate and supported. The record reflects tenderness, somewhat  
23 decreased strength, and some limits on range of motion in the shoulder and upper  
24 back throughout the period covered by Liu, Hanh, and Franck's opinions. Tr. 542-  
25 43, 548, 565-68, 963, 975, 980, 984. If a treating provider's opinions are based "to  
26 a large extent" on an applicant's self-reports and not on clinical evidence, and the  
27 ALJ finds the applicant not credible, the ALJ may discount the treating provider's  
28 opinion. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.2008); *see also*

1 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). However, when an  
2 opinion is not more heavily based on a patient's self-reports than on clinical  
3 observations, there is no evidentiary basis for rejecting the opinion. *See Ryan v.*  
4 *Comm'r of Soc. Sec.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). The ALJ did not  
5 identify any evidence in support of her conclusion that the providers unduly relied  
6 on Plaintiff's assertions or were acting as advocates. Additionally, as discussed  
7 above, the ALJ failed to offer legally sufficient reasons for discounting Plaintiff's  
8 subjective complaints.

9 Finally, the ALJ failed to specify what activities during this period she found  
10 to be inconsistent with the opinions. On remand, the ALJ shall reconsider the  
11 opinions from these sources regarding Plaintiff's shoulder limitations.

12 *b. Dr. Drenguis*

13 Plaintiff attended a consultative physical exam with Dr. William Drenguis in  
14 December 2018. Tr. 1809-15. Dr. Drenguis opined Plaintiff was limited to lifting  
15 and carrying 20 pounds occasionally and 10 pounds frequently, could sit for about  
16 six hours, and could stand and walk at least two hours. He assessed additional  
17 postural, manipulative, and environmental limitations. Tr. 1814-15. The ALJ found  
18 this opinion generally persuasive, other than the limitation on standing and walking  
19 and the environmental restrictions, which she found to be inconsistent with the  
20 exam and unsupported by the longitudinal record showing normal gait and lower  
21 extremity functioning. Tr. 1284-85.

22 Plaintiff argues the ALJ erred in finding the opinion unsupported by the  
23 doctor's own exam and the record as a whole, as there is consistent objective  
24 evidence relating to Plaintiff's spine limitations. ECF No. 20 at 21. Defendant  
25 argues the ALJ's interpretation of the record was reasonable and the court should  
26 defer to the ALJ rather than Plaintiff's alternative interpretation of the file. ECF  
27 No. 31 at 15-16.

28 ///

1 The Court finds the ALJ erred. Dr. Drenguis stated that Plaintiff was limited  
2 in standing and walking due to the degenerative changes in her lumbar spine and  
3 her chronic cervical sprains. Tr. 1814. His exam noted objective findings for these  
4 conditions, including only being able to perform half of a squat, tenderness to the  
5 cervical and lumbar spine, and less than normal range of motion in her neck, back,  
6 and shoulders. Tr. 1812-13. The ALJ did not mention these abnormal findings and  
7 summarized only the normal findings from the exam. Therefore, her conclusion  
8 that the opinion was inconsistent with the exam is not supported.

9 In terms of the record as a whole, the Court finds the ALJ's string-cite of  
10 "normal gait and lower extremity functioning" is insufficient to serve as a basis for  
11 disregarding Dr. Drenguis' opinion. Most notably, the vast majority of the ALJ's  
12 citations are to visits that did not revolve around her back problems. *See, e.g.*, Tr.  
13 1697-1720, 1861-65, 2119 (urology records); 1677, 1820, 1908, 1932, 1935, 1941,  
14 2180 (treatment for epicondylitis); 1752, 1762, 1774, 1781, 2111, 2140-58  
15 (treatment for diabetes, constipation, depression). Even when the citations do  
16 include indications of normal gait and lower extremity functioning, it is not clear to  
17 the court that this undermines Dr. Drenguis' findings, as the limitations on  
18 Plaintiff's abilities stem from her spinal impairment, which is well-documented  
19 through imaging and her spinal fusion in 2016.

20 Therefore, the Court finds the ALJ did not offer specific and legitimate  
21 reasons for discounting Dr. Drenguis' opinion regarding Plaintiff's ability to stand  
22 and walk.

23 *c. Drs. Bowes, Petaja, and Sanchez*

24 Plaintiff attended a consultative psychological exam with Dr. Tasmyn  
25 Bowes in April 2018. Tr. 1680-91. Dr. Bowes assessed persistent depressive  
26 disorder, chronic major depression, and rule out generalized anxiety disorder. Tr.  
27 1682. She opined Plaintiff had no more than moderate limitations in most work-  
28 related functional areas, but was markedly impaired in her ability to understand,



1 remember, and persist in tasks by following detailed instructions. Tr. 1683. This  
2 opinion was reviewed by Dr. Phyllis Sanchez, who agreed with the diagnoses and  
3 limitations. Tr. 1692.

4 Plaintiff attended a second exam with Dr. Bowes in October 2018. Tr. 1784-  
5 91. She updated the diagnoses and opined Plaintiff was now severely limited in her  
6 ability to perform activities within a schedule, maintain regular attendance, and be  
7 punctual within customary tolerances, and was markedly impaired in  
8 communicating and performing effectively in a work setting and completing a  
9 normal work week without interruptions from psychologically based symptoms.  
10 Tr. 1787. This report was reviewed by Dr. Holly Petaja, who concurred with the  
11 severity and functional limits assessed. Tr. 1824.

12 The ALJ addressed these four opinions concurrently, finding the mild and  
13 moderate limitations were generally consistent with the record, but finding the  
14 remainder to be unpersuasive, as Dr. Bowes offered no basis for the marked  
15 deterioration in Plaintiff's condition between the two exams, and finding the  
16 opinions were inconsistent with the generally unremarkable mental status exams  
17 conducted by Dr. Bowes and the longitudinal record demonstrating intact mental  
18 functioning. Tr. 1285-86. The ALJ further noted Dr. Bowes did not review any of  
19 Plaintiff's medical records, all of which suggested the opinions were primarily  
20 based on Plaintiff's self-reports. *Id.*

21 Plaintiff argues the ALJ erred, as Dr. Bowes' exams did include supportive  
22 findings in the mental status exams, and asserts that the ALJ did not properly  
23 assess the longitudinal mental health objective evidence. ECF No. 20 at 24-25.  
24 Defendant argues the ALJ reasonably discounted all of the psychological opinions  
25 as inconsistent with the overall record, noting Plaintiff simply offers a different  
26 interpretation. ECF No. 31 at 16-17.

27 The Court finds the ALJ erred. As an initial matter, Dr. Bowes' mental  
28 status exams were not "generally unremarkable." At the first exam, Plaintiff's



1 performance on concentration testing supported marked deficits in her cognitive  
2 functioning, and she displayed dysphoric mood, blunted affect, and low energy. Tr.  
3 1681-84. Her mental status exam was not within normal limits with respect to fund  
4 of knowledge, abstract thought, insight, and judgment. Tr. 1685. On the second  
5 exam Dr. Bowes noted Plaintiff to be irritable and resentful and exhibiting  
6 paranoia and reporting auditory hallucinations, and that her concentration was not  
7 within normal limits based on the results of the Trail Making test. Tr. 1788-89.  
8 These are not generally unremarkable findings. Furthermore, the ALJ failed to  
9 recognize that Dr. Petaja and Dr. Sanchez both opined that Dr. Bowes' reports  
10 were supported by the available objective medical evidence. Tr. 1692, 1824. An  
11 ALJ may not substitute her own interpretation of the raw data of a medical exam.

12       Regarding the ALJ's finding that the record as a whole did not support the  
13 opinions because it indicated Plaintiff maintained intact mental functioning, the  
14 Court finds the ALJ's analysis to be insufficient. As with the discussion above  
15 regarding Dr. Drenguis, the ALJ's string-cite of records supposedly demonstrating  
16 intact mental functioning largely includes records that do not pertain to Plaintiff's  
17 mental health treatment, and contain few if any mental findings, frequently noting  
18 only that she was alert and oriented. *See, e.g.*, Tr. 1697-1722, 1861-65, (urology  
19 records); 1069, 1122, 1126, 1130, 1740, 1745, 1765, 1837, 1845, 2124, 2174,  
20 2186, 2200, 2216, 2285, 2291-93 (treatment for diabetes, elbow pain, and various  
21 other acute physical problems). A number of the records cited pre-date Dr. Bowes'  
22 exams by many years. Tr. 594, 603, 1018, 1042, 1069, 2016, 2068. None of the  
23 cited records include formal mental status exams such as those administered by Dr.  
24 Bowes, other than the ones done by Dr. Ford and Dr. Sawyer, both of whom the  
25 ALJ also found to be unpersuasive. Tr. 1282-83, 1286-87. Therefore, substantial  
26 evidence does not support the ALJ's assessment that these records show intact  
27 mental functioning. Moreover, the record as a whole does include objective  
28 findings of Plaintiff's mental impairments, such as depressed and anxious mood

1 and affect, rumination, irritation, anger, fleeting suicidal ideation, poor  
 2 concentration, lethargy, and tearfulness. Tr. 1208, 1211, 1219, 1222, 1225, 1733,  
 3 1744, 1747-49, 1753-55, 1759, 1767, 1770-73, 1778, 1782, 1832-34, 1840, 1843,  
 4 1848, 1853-54, 2084-86, 2091-95, 2102-04, 2110-15, 2151, 2170, 2289-90.

5 Thus, the Court finds that the ALJ's rationale is not supported by substantial  
 6 evidence.

7 *d. Remaining medical source opinions*

8 Plaintiff assigns error to several other treating and examining source  
 9 opinions. The Court notes the ALJ used the same string-cite of records in rejecting  
 10 Dr. Beachy, Dr. Sawyer, and Dr. Ford's opinions regarding Plaintiff's mental  
 11 functioning. Given the ALJ's errors in evaluating the medical evidence discussed  
 12 above, reassessment of the other medical opinions is also warranted.

13 **3. Step two findings**

14 Plaintiff argues the ALJ erred at step two by failing to find obesity and sleep  
 15 apnea<sup>1</sup> to be severe impairments. ECF No. 20 at 3-5.

16 At step two of the sequential evaluation process, the ALJ must determine  
 17 whether the claimant has any medically determinable severe impairments. 20  
 18 C.F.R. §§ 404.1520(a)(ii), 416.920(a)(ii). An impairment is "not severe" if it does  
 19 not "significantly limit" the ability to conduct "basic work activities." 20 C.F.R. §§  
 20 404.1522(a), 416.922(a). Basic work activities are "abilities and aptitudes  
 21 necessary to do most jobs." 20 C.F.R. §§ 404.1522(b), 416.922(b). "An  
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23 <sup>1</sup> Plaintiff briefly asserts that the ALJ erred in failing to consider listing  
 24 3.02(c)(3) regarding Plaintiff's SpO<sub>2</sub> pulse oximetry levels. ECF No. 20 at 5.  
 25 However, the listing requires numerous other findings that Plaintiff does not  
 26 address in her briefing. *See* 20 C.F.R Part 404, Subpart P, Appendix 1, Sec.  
 27 3.02(c)(3). Plaintiff has not made any argument that her condition satisfies the full  
 28 criteria of this listing.

1 impairment or combination of impairments can be found not severe only if the  
2 evidence establishes a slight abnormality that has no more than a minimal effect on  
3 an individual's ability to work." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
4 1996) (internal quotation marks omitted). The step-two analysis is "a de minimis  
5 screening device used to dispose of groundless claims." *Webb v. Barnhart*, 433  
6 F.3d 683, 687 (9th Cir. 2005).

7 The ALJ found Plaintiff was treated for a number of conditions that did not  
8 cause any significant functional limitations or did not last for a continuous period  
9 of 12 months, including obesity and sleep apnea. Tr. 1268-69. Because this claim  
10 is being remanded for reconsideration of Plaintiff's subjective statements and the  
11 medical opinion evidence, the ALJ will reconsider which of Plaintiff's  
12 impairments are severe, including considering any additional evidence that may be  
13 submitted on remand.

#### 14 CONCLUSION

15 Plaintiff argues the ALJ's decision should be reversed and remanded for the  
16 payment of benefits. The Court has the discretion to remand the case for additional  
17 evidence and findings or to award benefits. *Smolen v. Chater*, 80 F.3d 1273, 1292  
18 (9th Cir. 1996). The Court may award benefits if the record is fully developed and  
19 further administrative proceedings would serve no useful purpose. *Id.* Remand is  
20 appropriate when additional administrative proceedings could remedy defects.  
21 *Rodriguez v. Bowen*, 876 F.2d 759, 763 (9th Cir. 1989). In this case, the Court  
22 finds that further development is necessary for a proper determination to be made.

23 The ALJ's RFC determination is not supported by substantial evidence in  
24 this case and must be reevaluated. On remand, the ALJ shall reevaluate the medical  
25 evidence and Plaintiff's subjective complaints, and take into consideration any  
26 other evidence or testimony relevant to Plaintiff's disability claim in completing  
27 the five-step analysis.

28 ///

1 Accordingly, **IT IS ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, **ECF No. 20**, is  
3 **GRANTED IN PART.**

4 2. Defendant's Motion for Summary Judgment, **ECF No. 31**, is  
5 **DENIED.**

6 3. The matter is **REMANDED** to the Commissioner for additional  
7 proceedings consistent with this Order.

8 4. An application for attorney fees may be filed by separate motion.

9 The District Court Executive is directed to file this Order and provide a copy  
10 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
11 the file shall be **CLOSED.**

12 **IT IS SO ORDERED.**

13 DATED April 19, 2021.



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A handwritten signature in black ink, appearing to read "JR", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE